

FILED
Court of Appeals
Division III
State of Washington
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No. 34763-0-III

IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

ERIC A. HAGGIN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITTITAS COUNTY

The Honorable Judge Scott R. Sparks

APPELLANT'S REPLY BRIEF

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A. INTRODUCTION

Appellant Eric Haggin accepts this opportunity to reply to the State's Brief, which was filed in this Court on December 1, 2017.

B. ADDITIONAL FACTS

Mr. Haggin filed his opening brief in this case on February 15, 2017. Mr. Haggin argued his offender score, which was calculated as a 12, was actually nine points due to juvenile offenses washing out (for a reduction of one point from the offender score) and his two firearm and two drug offenses constituting same criminal conduct (for a reduction of two additional points). See Appellant's Opening Brief, filed 2/15/2017.

The Court of Appeals subsequently granted the parties' motion to stay the appeal so that Mr. Haggin could be resentenced. On April 24, 2017, a resentencing hearing was held. At that hearing, the State provided certified records of intervening criminal history to show why Mr. Haggin's juvenile offenses would not wash out. Supp VRP 4/24/2017 pg. 4. The prosecutor then informed the trial court that the same criminal conduct argument would be addressed on appeal. *Id.* at 5. Defense counsel renewed the argument that the high end of the standard range was not necessary, because the offender score was a ten rather than 12 due to same criminal conduct. *Id.* at 5-6. The trial court noted the Court of Appeals had not yet ruled on the same criminal conduct issue and

maintained the same decision it had before appeal. *Id.* at 6; CP 186. In other words, the same criminal conduct issue remains an issue for this appellate court to decide.

C. ARGUMENT IN REPLY

1. The same criminal conduct argument is not moot; when the appeal was stayed to allow further proceedings in the trial court, the trial court maintained its same erroneous position that the two firearm and two drug counts did not constitute same criminal conduct.

The same criminal conduct argument raised on appeal is not moot. The trial court maintained its same erroneous assumption that Mr. Haggin's two firearm offenses and two drug offenses did not constitute the same criminal conduct, respectively. The trial court and prosecutor specifically discussed the fact that the Court of Appeals had yet to decide in this case whether Mr. Haggin's offenses constituted the same criminal conduct. This Court is in the position to provide effective relief. That is, it can determine that Mr. Haggin's offenses constituted same criminal conduct and remand for resentencing. If the trial court is still inclined to impose the high end of the standard range and to reject Mr. Haggin's request for a lesser sentence within the standard range, it should only do so while understanding Mr. Haggin's actual offender score.

As a general rule, this Court will not consider questions that are moot. *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012) (citing

State v. Gentry, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995)). “A case is technically moot if the court can no longer provide effective relief.” *Id.*

The State cannot meet the barest threshold of establishing that Mr. Haggin’s appellate issues are all moot. Specifically, the same criminal conduct issue is not moot. The prosecutor acknowledged in the remand hearing that this Court had not yet decided if the firearm and drug offenses constituted the same criminal conduct. Supp VRP 5. The trial court then had the opportunity to reconsider its decision on the same criminal conduct issue and sentence Mr. Haggin based on an offender score of 10, but it instead affirmed its previous decision that the offenses were not the same criminal conduct and again imposed the high end of the standard range. In other words, rather than correct its own initial, erroneous legal impression on the same criminal conduct issue and then impose a sentence accordingly, the trial court maintained the same erroneous stance on the same criminal conduct issue at the resentencing hearing. Thus, the same criminal conduct issue is very much still in contention before this Court.

To reiterate the issue set forth more fully in Mr. Haggin’s opening brief, Mr. Haggin was convicted of possession with intent to deliver two illegal substances that were found in the same backpack, at the same time, in the same apartment, and with the same victim (the public at large).

State v. Garza-Villarreal, 123 Wn.2d 42, 47, 864 P.2d 1378 (1993). And,

the State never established that Mr. Haggin's criminal intent was to deliver the substances in multiple transactions (*see id.*), so these two drug counts should have constituted the same criminal conduct.

Similarly, the two firearms were found in Mr. Haggin's apartment at the same time when officers executed a search warrant, and the offenses were both committed against the same victim (the public at large) with the same intent of possessing firearms contrary to Legislative intent that convicted felons not do so. *State v. Haddock*, 141 Wn.2d 103, 106, 108-09, 3 P.3d 733 (2000). In other words, Mr. Haggin's two firearm offenses constituted the same criminal conduct.

Finally, to reiterate from Mr. Haggin's opening brief, a sentencing court errs when it imposes even a standard range sentence where it is not clear the court would have imposed the same sentence had it known the correct offender score. *State v. Tili*, 148 Wn.2d 350, 358, 60 P.3d 1192 (2003). The trial court must understand the correct offender score before even a presumptive sentence is imposed. *Id.* The problem in this case that was identified in Mr. Haggin's opening brief remains at this time: it is impossible to know from the record created by the sentencing court whether it would have imposed the same high-end standard range sentence if it understood Mr. Haggin's offender score was two points lower as a result of a same criminal conduct analysis.

Mr. Haggin requests this Court hold that the firearm and drug offenses were same criminal conduct and remand for the trial court to sentence Mr. Haggin whilst understanding his offender score is actually two points lower.

E. CONCLUSION

For the reasons set forth above and in Mr. Haggin's opening brief, the matter should be reversed and remanded for resentencing.

Respectfully submitted this 4th day of December, 2017.

/s/ Kristina M. Nichols

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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)	
Plaintiff/Respondent)	COA No. 34763-0-III
vs.)	No. 14-1-00231-8
)	
ERIC ALLEN HAGGIN)	PROOF OF SERVICE
)	
Defendant/Appellant)	
_____)	

I, Kristina M. Nichols, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on December 4, 2017, I mailed by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's opening brief to:

Eric Allen Haggin DOC #786070
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

Having obtained prior permission from the Kittitas County Prosecutor's Office, I also served the foregoing by email at prosecutor@co.kittitas.wa.us using Division III's e-service feature.

Dated this 4th day of December, 2017.

/s/ Kristina M. Nichols

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